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IN THE

Supreme Court of the United States

OCTOBER TERM—1964

No. [redacted] 55

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

BERT N. ADAMS, ET AL.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE GOVERNMENT'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

THE UNITED STATES OF AMERICA,
Petitioner,

v.

BERT N. ADAMS, EMMA ADAMS, GEORGE HALLINGBY (individually and as Executor of the Estate of Olaf Hallingby, deceased), JANE MAESEL, IRIS PETRY, LEWIS M. SCHOTT, MARY ELLEN HALLINGBY SEIMERS, and HELEN LOUISE SUTCLIFFE (individually and as Executrix of the Estate of Ernest M. Sutcliffe, deceased),
Respondents.

No. 906

RESPONDENTS' BRIEF IN OPPOSITION TO THE GOVERNMENT'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Respondents respectfully pray that the Government's Petition for a Writ of Certiorari herein be denied.

Jurisdiction

On May 2, 1960, Adams[1] brought this suit in the Court of Claims on two claims, one for patent infringement and the other for breach of contract.

[1]The nine respondents are hereinafter collectively referred to as Adams.

On April 17, 1964, the Court of Claims rendered a final judgment holding the Adams patent valid and infringed and declined to decide the breach of contract claim (330 F. 2d 622, 624).

Neither side objected to this final judgment on the patent claim, petitioned for a rehearing on the subject, filed a petition for certiorari, or an application for an extension of time to file such a petition until the Government did so on January 14, 1965, nine months later.

The jurisdiction of this Court under 28 U. S. C. § 2101 (c) is in issue.

Statutes Involved

Title 28 of the United States Code provides in pertinent part:

> "§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay
>
> * * *
>
> "(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

Questions Presented

1. Was the petition for certiorari filed within the period allowed by law? 28 U. S. C. § 2101 (c).

2. Was the petition for certiorari served and filed in accordance with the applicable Rules of this Court (Rules

21 (1) and 33) and within the period of time granted to the Government by the honorable Chief Justice of this Court by order dated January 21, 1965?

3. Was not the ruling of the court below, holding the Adams patent valid, in full conformity with the applicable decisions of this Court applying the constitutional and statutory standards of invention?

Statement of the Case

In 1939, Bert Nemo Adams, a man interested in batteries, but with no scientific training or experience (R. 31-3), discovered that when cuprous chloride was used in combination with magnesium and water the result was a new type of battery (R. 36; 166-7). In 1940, after accidentally dropping cigarette ashes into the cuprous chloride which he was making into a cathode, Adams discovered that the addition of carbon to the cuprous chloride improved the performance of the battery by providing a level (constant) potential (R. 39-42).

Thereby Adams invented the first practical, water-activated, constant potential battery capable of operation at extremely low temperatures (R. 208-10). Every battery consists of three components, two electrodes and an electrolyte (R. 325). The difference between Adams battery and all prior art batteries is that Adams selected three components for his battery, each of which individually had been well known in the battery art for over 50 years (R. 636) but which no one before had ever put together[2]

[2]The Government admits they were never put together before. In its Petition, p. 11, the Government states "It is true that Adams put together elements not actually combined before and obtained more favorable results, for some purposes, than had prior combinations."

(R. 636), or recognized as an operative battery (Pl. Ex. 16, p. 702, lines 2-5, R. 109; R. 325; 313). The Adams battery functions in a manner completely different from any other prior art battery (R. 313; 325) and produces results completely different from those that any other battery had ever before produced (R. 210; 165; 313). These new results were *unexpected* (R. 298; 309-13; Tr. Ex. 15, p. 2, Further Stip. dtd. July 6, 1961, R. 49), *highly useful* (R. 315-6; 157-8; 158-9; Comm. Ex. 2, p. 23, 25, 88, Memo. Pretrial Conf. dtd. June 12, 1961, p. 5, para. 10; Pl. Ex. 18, p. 4, R. 113), *unbelievable* (R. 309-13) and *unbelieved* at the time (R. 80-1; Pl. Ex. 16, p. 702, lines 2-5, R. 109; R. 324-8; 309-13).

In operation, the Adams battery generates great quantities of heat, which rather than destroying it as occurs in all conventional batteries, actually provides a source of self-generated heat which permits this battery to operate with unreduced efficiency in space, or in the arctic, at temperatures almost 100° below the freezing temperature of the water with which it is activated (R. 155-6; 80-1; Comm. Ex. 2, p. 88, Memo. Pretrial Conf. dtd. June 12, 1961, p. 5, para. 10; Pl. Ex. 19, p. 1, para. 2, R. 113). The Government's experts at first believed that because of this exothermic reaction, the battery was inoperative (R. 324-8; Pl. Ex. 16, p. 702, lines 2-5, R. 109; R. 313; Tr. Ex. 12, pp. 11-12, Stip. June 6, 1961, para. 12), but they now agree that it is this same exothermic reaction which gives the Adams battery one of its most important advantages, extreme low temperature operation (Pl. Ex. 37, p. 203C, col. 2, R. 298; R. 294; Comm. Ex. 2, p. 71 and 88, Memo Pretrial Conf. dtd. June 12, 1961, p. 5, para. 10; Tr. Ex. 2, p. 1, col. 1, lines 12-13, Stip. June 6, 1961 para. 4; Pl. Ex. 19, p. 1, para. 2, R. 113).

It is astonishing that Adams, a virtual tyro, could recognize and comprehend the unusual electrochemical

characteristics of his battery, but he did. All the new results and characteristics of his battery were stated in the Adams patent[3] applied for in 1941 and issued in 1943 and were divulged to the Government by Adams in confidence on January 7, 1942, in writing (Tr. Ex. 15, pp. 1-3, Stip. June 8, 1961, para. 10 and Memo. Pretrial Conf. dtd. June 12, 1961, para. 1, R. 308-13).

A man skilled in the art[4] has testified that it was ridiculous for Adams to expect that the three components he combined in his battery would be operative or function as a battery (R. 401; 212). When Adams first made his battery there was no scientific theory or explanation that would predict its operation (R. 400-1). There was no scientific theory that would explain its operation (R. 398-401). Even today the theory upon which the Adams battery operates is unknown (R. 400). When the Adams battery was disclosed and demonstrated to the Government's battery experts at Fort Monmouth, shortly after Pearl Harbor, they could not believe that it would work and said so orally (R. 80; 96) and in writing (R. 324; Tr. Ex. 12, pp. 11-12, Stip. June 6, 1961, para. 12; Pl. Ex. 16, p. 702, lines 2-5, R. 109), but later they decided they were wrong (Pl. Ex. 16, p. 702, lines 5-6, R. 109; R. 315-6; Comm. Ex. 2, pp. 23, 25, 88, Memo. Pretrial Conf. dtd. June 12, 1961, p. 5, para. 10). Since the time of Adams disclosure of his battery to the experts at Fort Monmouth, these same experts have taken out patents on the magnesium, cuprous chloride, water-activated battery in which they pay tribute

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[3]Contrary to the Government's statement in its Petition, page 4, footnote 2, the Adams patent is not reprinted in full in the Government's Appendix to its Petition. The Adams patent is Trial Exhibit 10, (received in evidence by Stip., June 8, 1961, para. 10, attached to Memo. Pretrial Conf., June 12, 1961, para. 1).

[4]This was Adams expert, who was described by the Government as "a very renowned electrochemist" (R. 212).

to the scientific achievements of this cell (Tr. Ex. 2, p. 1, col. 1, lines 12-13, Stip. June 6, 1961, para. 4).

The Adams battery has now come to be recognized as an extremely important step in rounding out the sources of battery furnished power and filling important, long-standing needs of both civilian and military natures (R. 315-6; 157-9; Pl. Ex. 18, p. 4, R. 113; Comm. Ex. 2, pp. 23, 25, 69, 88, Memo. Pretrial Conf. dtd. June 12, 1961, p. 5, para. 10). It has made possible scientific advances which would otherwise have not been feasible according to statements in Government publications made *ante litem motam*. In such publications, the Adams battery has been heralded as "unsurpassed" (Comm. Ex. 2, p. 23, Memo. Pretrial Conf. dtd. June 12, 1961, p. 5, para. 10), "extremely important to the military" (Comm. Ex. 2, p. 23, *supra*), "helped immensely in rounding out the sources of battery power" (Comm. Ex. 2, p. 25, *supra*) and "brought about developments which would otherwise have been technically or economically impractical" (Comm. Ex. 2, p. 25, *supra*). The Government has procured over a million of these batteries (Comm. Ex. 2, p. 88, *supra*) and in so doing has saved over five million dollars (Comm. Ex. 2, p. 25, *supra*).

On May 2, 1960, this suit was brought against the United States in the Court of Claims to recover for (1) breach of an express or implied contract and (2) for infringement of the Adams patent, U. S. Letters Patent No. 2,322,210, issued on June 22, 1943 (Adams Petition filed May 2, 1960).

The Government urged before the trier of the facts (i.e., the Commissioner) that the Adams patent was anticipated by much ancient art. It relied particularly on nine patents, some of which were 50 or 60 years old at the time, which disclosed zinc and silver chloride as electrode components for batteries. The Government urged that the art

taught that magnesium could be substituted for zinc in such batteries, but the Government's own expert testified to the contrary (R. 604).

The Government urged that it was within the skill of the art to construct the Adams battery, but the Government's own expert did not agree (R. 636-7).

The Commissioner recommended that the Adams patent be found valid and infringed by the Government's procurement of magnesium, cuprous chloride, water-activated batteries. The Commissioner recommended that the breach of contract cause be dismissed (Comm. Op., Jan. 28, 1963). The Court of Claims on April 17, 1964, rendered a final judgment that the patent was valid and infringed but determined that it did not have to decide the breach of contract cause (330 F. 2d 622, 624).

Neither the Government nor Adams took issue with the final judgment of the Court of Claims on the patent claim, rendered April 17, 1964, until the Government did so nine months later.

On May 11, 1964, Adams (not the United States as the Government alleges in its Petition, p. 4, footnote 1) moved the Court of Claims to alter its opinion and judgment, or for a rehearing *solely* to determine the issue of the breach of contract (Motion to Alter or Amend, etc., filed May 11, 1964).

On October 16, 1964, the Court of Claims rendered a final judgment that there was no breach of contract (Pet., App., pp. 39-40).

The Government belatedly filed an application for an extension of time to file a petition for a writ of certiorari as to the final judgment of the Court of Claims on the *patent claim* on January 14, 1965. This was *some nine months after* the final judgment *on the patent claim* was rendered and thereby some six months late.

By order dated January 21, 1965, the Chief Justice extended the time for petitioning for certiorari to and including February 13, 1965.[5]

The Government's petition for certiorari requesting this Court to review the final judgment of the Court of Claims on the patent claim was delivered to the Clerk of the Supreme Court on February 12, 1965. Copies were not mailed to Adams until February 16, 1965 (App. *infra*, pp. 20-3) three days after the expiration of the extended period of time granted to the Government by the Chief Justice.

ARGUMENT

1. The Government's Petition Was Not Filed Within The Period Allowed By Law

Adams above-referred to motion of May 11, 1964, for a determination of the contract claim was entitled "Motion to Alter or Amend the Opinion and Judgment of the Court of April 17, 1964, or for a Rehearing." Said motion, in its entirety, was as follows:

> "Plaintiffs respectfully move this Court, pursuant to Rule 68, to determine the issue of the breach of the alleged implied contract* and to provide for a determination of the amount of recovery under said contract claim by the trial commissioner, pursuant to Rule 47 (c) (2), and to alter or amend its

[5]The Chief Justice was not advised in the Government's Application (filed January 14, 1965) for an extension of time to file a petition for certiorari to review the judgment of the Court of Claims on the *patent claim*, that the "timely petition for rehearing" and subsequent decision of the Court of Claims relied on therein to toll the expiration of the time for filing were limited to the *breach of contract claim*.

opinion and judgment dated April 17, 1964 accordingly. A rehearing is prayed should the Court deem that the same would be helpful."

The Footnote reads:

"'Contract' as used herein is intended to include plaintiffs' allegations of express and implied contract and an unlawful taking under Article 5 of the Constitution."

It is clear that the motion had nothing whatsover to do with the patent claim.

On October 16, 1964, the Court of Claims decided that there was no breach of contract (Pet., App., pp. 39-40).

The Government's application for an extension of time to file a petition to review *the patent claim* was filed January 14, 1965 (90 days after the judgment of the Court of Claims on *the contract claim*, as to which the Government sought no review, and *nine months* after the judgment of the Court of Claims on *the patent claim*). Extension having been granted, the Petition was filed February 12, 1965. It is submitted that the application for extension and subsequent Petition to review the judgment *on the patent claim* were filed too late to comply with the provisions of 28 U. S. C. § 2101(c).

In *Federal Trade Commission* v. *Minneapolis-Honeywell Co.*, 344 U. S. 206, this Court held that a substantive change in a judgment not affecting the portion sought to be reviewed does not extend the time for seeking review of the unchanged portion.

This Court stated at page 213 of the *Minneapolis-Honeywell* decision that:

"Thus, while we do not mean to encourage applications for piecemeal review by today's decision, we

> do mean to encourage applicants to this Court to take heed of another principle—the principle that litigation must at some definite point be brought to an end. It is a principle reflected in the statutes which limit our appellate jurisdiction to those cases where review is sought within a prescribed period. Those statutes are not to be applied so as to permit a tolling of their time limitations because some event occurred in the lower court after judgment was rendered which is of no import to the matters to be dealt with on review."

That ruling of this Court should be dispositive of the issue here. The Government's petition to review the decision on the patent claim filed February 12, 1965, should be held to be too late because the judgment of the Court of Claims of April 17, 1964, was the final judgment on *the patent claim,* and the application for extension of time to review that *judgment* was filed almost nine months thereafter (28 U. S. C. § 2101(c), *supra,* p. 2).

2. The Petition Was Not Served And Filed In Accordance With The Rules Of This Court Within The Time Allotted By Order Of The Chief Justice

On January 21, 1965, the Chief Justice of this Court extended the time to file the Government's Petition to and including February 13, 1965. On February 12, 1965, the Government delivered its Petition to the Clerk of this Court and at the same time filed a Certificate of Service stating that copies of the Petition were mailed on February 12, 1965 to counsel for Adams. This act of mailing had not taken place[6] and, in fact, copies of the Petition were not

[6]This is admitted. See exchange of letters between counsel (App., *infra,* pp. 20-3).

mailed by the Government to counsel for Adams until after counsel for Adams telephoned the Government on the matter. Thereupon on February 16, 1965, three days after the expiration of the period set by the Chief Justice for the filing of said Petition, copies were first mailed to counsel for Adams.

The Petition for Certiorari is now required to be served (as by an act of mailing) on opposing counsel *before* it is filed (Rule 21 (1) and Rule 33), and not within ten days thereafter as was permitted under the former rules. Since the act of mailing did not take place prior to the act of filing in the instant case, the "filing" on February 12, 1965 was ineffective. Service did not take place until February 16, 1965. Thereby the "filing" of the Petition was not in accordance with the terms of the Chief Justice's Order which, taken in conjunction with the Rules of this Court, required that filing and service be accomplished no later than February 13, 1965. For this reason the Petition should be denied.

3. The Court Below Properly Applied The Constitutional And Statutory Tests Of Invention In Conformity With The Applicable Decisions Of This Court

Scientifically, this is an extraordinary patent case, but in the legal sense, it is a most ordinary patent case. Both tribunals[7] below have found the patent valid as a matter of law on concurrent findings of fact that support that conclusion and in turn are supported by the Record. Such concurrent findings are not to be set aside unless clearly erroneous. *Graver Mfg. Co.* v. *Linde Co.,* 336 U. S. 271, 275;

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[7]i.e., the Commissioner in his recommended Opinion and Findings and the Court of Claims in its decision accepting the same.

Goodyear Co. v. *Ray-O-Vac Co.*, 321 U. S. 275, 278. It is submitted that the concurrent findings are clearly correct.

Although the Government attempts to show that the Adams patent covers a minor improvement not rising to the dignity of invention, the facts of record show that an important invention is involved. The Government attempts to show that this is a case involving the question of the standard of invention, and its correct application, which it suggests the Court of Claims has failed to do, but the facts show that this is not so.

The Government does not allege, in its petition, that the applicable patent statutes fail to conform with the authorization in Art. I, Section 8, Cl. 8 of the Constitution, or that Congress in any way exceeded its authority in passing the recent codification of 35 United States Code by the Patent Act of 1952 (35 U. S. C. § 1, *et seq.*) or the previous statutes of which it is a codification.

Moreover, the Government does not question that the Adams battery is new and useful as required by 35 U. S. C. § 101 (See. Pet., p. 11, lines 11-14) or urge that the Adams patent is barred by any of the provisions of § 102. The Government's position is merely that the Court of Claims did not properly take into account the requirement of § 103 that:

> "A patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

A reading of the opinion of the Court of Claims herein (330 F. 2d 622-635 and particularly Findings 13-24 re-

lating to validity, 330 F. 2d 622, 631-2 and Pet., App., pp. 29-32) shows clearly that the court below carefully considered and properly applied § 103.

The evidence on the question of lack of obviousness and, correlatively, invention is summarized in Commissioner's Findings 22-24 as follows (330 F. 2d 622, 632 and Pet., App., pp. 31-32):

> "22. Each of the elements of the several claims of the Adams patent was individually old in the battery-making art at the time of the filing of the Adams application for the patent here in suit. While there is evidence of a definite need for a battery having the characteristics of the Adams battery, those skilled in the art failed to develop one for a period of over 50 years, during which time all of the necessary ingredients were available. There is no evidence that anyone had ever before suggested the specific *combination* of elements which make up the Adams battery nor that anyone had ever before suggested that such a battery would have a substantially constant potential, could be operated under extreme temperatures, and could be operated with ordinary or distilled water." (Emphasis in original)
>
> "23. The Adams invention was the first practical, water-activated, constant potential battery capable of operation at low temperatures. When Adams first disclosed his invention to others skilled in the art, he did not know its theory of operation and it was received with considerable skepticism. However, this development was subsequently recognized throughout the industry as an extremely important step in rounding out the sources of battery-furnished power, and filling important, long-standing needs of both civilian and miltary natures."

> "24. Summarizing findings 22 and 23, the Adams invention was not, as a whole, obvious, at the time the invention was made, to a person having ordinary skill in the battery art."

We respectfully submit that the Adams patent meets all and any criteria of invention, however strict. When something for which there has been a definite need has eluded the skill of the art for over 50 years, is invented by a virtual layman, is first received with considerable skepticism, and then recognized throughout the industry as an extremely important step, it represents precisely the kind of "original creative contributions"[8] as to which the Constitution authorized the grant of a patent monopoly.

The Adams invention meets the test of the *Great Atlantic & Pacific Tea Co.* v. *Supermarket Equipment Co.*, 340 U. S. 147 at 152 relied on by the Government at Petition, pages 12-13. The Adams invention added to the sum of useful knowledge, and moreover did so after overcoming the skepticism of those skilled in the art.[9]

Since the constitutional and statutory requirements were satisfied by the Adams invention on the facts of Record and were carefully considered by the court below in relationship to this Court's most applicable decisions, it is respectfully submitted that there is no reason for granting the writ requested by the Government.

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[8]Quoting Petition at pages 13-14.

[9]The *A & P* case, like the other cases cited on page 12 of the Government's Petition relates to exhausted mechanical combinations like the supermarket checkout counter, the eraser-pencil, the automobile cigar lighter, the tank car, and the insulated jug. The *A & P* case states that "Elements may, or course, especially in chemistry or electronics, take on some new quality or function from being brought into concert, but this is not a usual result of uniting elements old in mechanics." *Great Atlantic & Pacific Tea Co.* v. *Supermarket Equipment Co.*, 340 U. S. 147, 152.

4. The Facts Of Record, Which The Government Asks This Court To Review, Refute The Government's Contentions

The Government asks this Court to review the facts of Record in detail, and suggests that, *inter alia,* the Skrivanoff 1880 patent[10] (Pet., p. 11) is identical with Adams in teaching the use of magnesium and cuprous chloride and that it is operative with water. The Court of Claims found to the contrary, as follows:

> "The Skrivanoff foreign patent discloses a battery having an electrode of magnesium, an electrode comprising cuprous chloride *mixed together with* some seven other substances, and a strong electrolyte. The evidence establishes that the disclosure of this very old patent is inoperative." (Find. No. 17, Pet., App., p. 31; 330 F. 2d 662, 632)

The Record as to the value of Skrivanoff's contribution to the art is enlightening. Adams expert tried Skrivanoff (the Government's expert did not (R. 638)) and stated:

> "I had two fires, and blew the side out of a vent. When I took the mix which was made and tried to make a battery, and then added the electrolyte on the other side, concentrated chromic acid, and then added potassium permanganate, I did not know what I had because it blew up." (R. 646)

The Government also wishes this Court to review the facts of Record on the art showing the use of silver chloride electrodes, cited at trial. However, the Record shows that this silver chloride art is less apt, if that be possible, than the cuprous chloride art relied on.

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[10](Def. Ex. 19, R. 635).

The Government argues that the Adams battery is of "identical design" with one described in a patent to Hayes[11] in 1883 disclosing zinc and silver chloride electrodes, but admits that the two electrodes used by Adams were of different material from those in the 1883 Hayes patent and that where the earlier patent employed a dilute solution of ammonium chloride or sodium chloride Adams used "ordinary tap water" (Pet., pp. 8-9). So the Hayes "anticipation" consists of three elements, an anode, a cathode and an electrolyte, all different from the three elements of Adams.

More importantly, the Government fails to advise this Court that its expert testified that it was not within the skill of the art in 1938 to substitute a magnesium anode for a zinc anode in this same 1883 patent to Hayes (R. 604).

In essence the Government urges that "it is not just hindsight that enables one to say that any mechanic skilled in the art, . . . would be led to try and could readily produce the new combination" (Pet., p. 12). This is the opposite of what the Court of Claims found. The Record supports its decision and not the Government's argument for, on this point, the Government's expert testified on cross-examination:

> "Q. Doctor, how is it that it took a man skilled in the art, I think you said, until 1938, to put the combination together, where all the components had been known in the art since 1888 for the last one? How do you explain the time lapse of 50 years r a half century?
>
> "A. I think this can't very well be answered. Maybe there was no need for it. Somebody has to have the need and the opportunity. I don't know.

[11] (Def. Ex. 2, R. 633).

"Q. You don't know?
"A. That is right." (R. 636-7)

By that answer, the Government's expert admitted that he could not say that the Adams invention was obvious to a man skilled in the art, or explain the failure of the art to provide the invention.

It is submitted that the facts of record establish that the Findings of Fact of the Court of Claims were correct in each disputed instance.

5. This Case Is Not Of Sufficient Importance To Warrant Review By The Supreme Court

The Adams patent expired almost five years ago, there are no suits pending or filed other than the instant case. No large or important interests or corporations are involved here. The respondents are simply the inventor and his wife, and seven other individuals, most of whom are the heirs of two investors who had confidence in Adams some 25 years ago. A decision in this case will not affect Government procurement, any great number of people or any industries. It is submitted that despite the scientific interest of the Adams case, the legal principles involved were long ago determined by this Court and correctly applied to the facts of this case by the Court of Claims in its decision below.

CONCLUSION

It is respectfully requested that the Petition be denied. The Record does not present a case calling upon this Court to exercise its supervisory powers. There is no unsettled or disputed question of law and no question of general interest,

public importance or legal significance arising from the facts of this case calling for the grant of certiorari.

Indeed this Court cannot, consistently with its prior decisions and its Rules, entertain the Petition in view of the delay in its filing and its service.

Respectfully,

JOHN A. REILLY
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165 Broadway
New York, New York 10006

Of Counsel:

WILLIAM J. UNGVARSKY
KENYON & KENYON

Dated: March 3, 1965

CERTIFICATE OF SERVICE

Five copies of the foregoing Respondent's Brief were served upon the Solicitor General, Department of Justice, Washington, D. C., 20530, by depositing the same in a U. S. Post Office at New York, New York, with first-class postage pre-paid, addressed as above, and

Two copies of the said Brief were served upon Paul F. Arseneau, Esq., Department of Justice, Washington, D. C., 20530, by depositing the same in a U. S. Post Office at New York, New York, with first-class postage pre-paid, addressed as stated,

This 3rd day of March, 1965.

JOHN A. REILLY

.....

John A. Reilly
Attorney for Respondents

APPENDIX

February 18, 1965

Archibald Cox, Esq.
Solicitor General
Office of the Solicitor General
Washington, D. C. 20530

Re: United States of America v. Adams, et al.—
U. S. Supreme Court Docket No. 906

Dear Prof. Cox:

On February 17 I received from your office two envelopes both mailed special delivery, one containing five copies of the Petition for Certiorari in this matter and the other containing a statement that the record had been filed. Both of these documents were mailed on February 16, 1965.

Prior to that time I had received no copies of the Petition for Certiorari which I am informed was filed on February 12, and I caused my local associate in Washington to call the Department of Justice to ascertain what had occurred. At the Department of Justice apparently it was impossible to find out who had mailed the Petition to me and additional Petitions were sent as I have said.

I am informed that according to the records in the Supreme Court there was a Certificate of Service filed indicating that copies were mailed to me special delivery on February 12, 1965, and I am writing to you to inquire as to who the person is who was to have mailed these copies to me, when he mailed them and where from.

You will appreciate that I am directing my question as to whether or not actual service was, in fact, made on the appropriate date and that is the reason for this inquiry. Should you find that for one reason or another mailing was not made, then I would appreciate the opportunity to discuss this matter with you by phone, if that is convenient.

Very sincerely yours,

/s/ JOHN A. REILLY
John A. Reilly

OFFICE OF THE SOLICITOR GENERAL
WASHINGTON, D. C. 20530

February 23, 1965

John A. Reilly, Esq.
Kenyon & Kenyon
165 Broadway
New York, New York 10006

Re: *United States* v. *Adams (No. 906)*

Dear Mr. Reilly:

I have your letter pointing out that you did not receive copies of the government's petition in the above-captioned case until February 17, 1965, although, as you correctly note, it was filed on February 12. I have checked into the matter and find that we were entirely responsible for the delay, which I sincerely regret. The young lady in our docketing unit prepared the papers for service and for filing on February 12. Unaccountably, the papers destined for you were mislaid or side-tracked and the omission was not noticed until several days later. We usually succeed in avoiding this kind of slip-up and I can only say, by way of explanation, that we have been shorthanded in recent weeks, having lost our chief clerk a short time ago.

Let me say again, that I am sorry for the inconvenience caused you. I feel sure, however, that the Clerk of the Supreme Court will permit you to compute your thirty days for response to the petition from the date of actual receipt.

In all events, if you should wish an extension of time pursuant to the Court's Rule 34(5), you may certainly treat this letter as a consent.

Sincerely,

/s/ ARCHIBALD COX
Archibald Cox
Solicitor General

cc: Honorable John F. Davis
Clerk
Supreme Court of the United States
Washington, D. C. 20543